



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Maple Construction Co., Inc.

File: B-270073

Date: February 6, 1996

Goutam Dalal, Maple Construction Co., Inc., for the protester.
Cynthia S. Guill, Esq., Department of the Navy, for the agency.
Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed the correction of a mistake in the awardee's low bid where the awardee presented clear and convincing evidence of the existence of the mistake and of the intended bid price, within a narrow range of uncertainty, and the bid remained low.

DECISION

Maple Construction Co., Inc. protests the award of a contract to Dunn Electric Co., Inc., under invitation for bids (IFB) No. N62477-94-B-0213, issued by the Department of the Navy, for security lighting. Maple contends that the Navy improperly permitted Dunn to correct a mistake in its apparent low bid.

We deny the protest.

The Navy issued the IFB on August 3, 1995, to obtain a contractor to improve the security lighting system at Henderson Hall, Arlington, Virginia. At bid opening on September 6, 1995, the Navy received eight bids, including Dunn's apparent low bid of \$150,150 and Maple's next low bid of \$197,000. The government estimate for the project was \$207,000.

On September 14, Dunn informed the Navy that its bid contained a mistake. Dunn explained that the error occurred in a line item subtotal where instead of subtracting the amount of \$788 from \$3,521.89 for a total of \$2,733.89, it subtracted 788 percent from \$3,521.89 for a total of -\$24,230.60. Dunn stated that the correct total of its bid should have been \$184,841 (including standard mark-ups). Dunn furnished certified computer-generated worksheets in support of the mistake, claiming that the 788 percent was an input error made to the computer program. Dunn asked that it be allowed to correct its bid.

Based upon Dunn's explanation of how the mistake occurred and the certified worksheet, the Navy determined that Dunn had provided clear and convincing evidence of the mistake and its intended bid. The Navy calculated Dunn's intended bid to be \$184,060.52, which reflected a reduction of \$798.07 from Dunn's claimed corrected bid amount. The Navy found that Dunn in its originally submitted mistaken bid had reduced the bid by \$798.07 by rounding the bid down; the Navy, while finding no specific formula for arriving at Dunn's adjustments, similarly reduced Dunn's corrected bid by this amount, stating that this amount fell within a narrow range of uncertainty. On September 27, the Navy made award to Dunn at a corrected price of \$184,061. This protest from Maple followed.

An agency may allow upward correction of a low bid before award where there is clear and convincing evidence establishing both the existence of the mistake and the intended bid. Federal Acquisition Regulation (FAR) § 14.406-3. Whether the evidence meets this standard is a question of fact, and our Office will not question an agency's decision based on this evidence unless it lacks a reasonable basis.

Severino Trucking Co., Inc., B-259080.2, Mar. 23, 1995, 95-1 CPD ¶ 160.

Workpapers, including records of computer-generated software spread sheets (hard copy printouts, disks, or other software media), may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. C Constr. Co., Inc., B-253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198. The exact amount of the intended bid need not be established, provided that there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. CRK-JVC/Shockley Joint Venture, B-265937, Jan. 17, 1996, 96-1 CPD ¶ ____.

Our review confirms that the Navy reasonably permitted Dunn to correct its bid. The computer-generated worksheets that Dunn certified to be accurate and original are in good order. The worksheets support Dunn's explanation that \$788, rather than 788 percent, was intended to be deducted from the subtotal \$3,521.89, being deducted from this figure. The worksheets show both dollar and percentage adjustments for line item pricing, but no other adjustments are of the magnitude of the 788 percent adjustment. Rather, the percentage adjustments that Dunn made to the other line items fall within a range of 10 and 15 percent; the 788 percent adjustment is markedly outside of this pattern. It is not reasonable to assume that Dunn intended to reduce this line item by more than the subtotal itself. On the contrary, it is reasonable to find that the 788 figure was merely wrongly entered into the computer as a percentage rather than as a dollar subtraction. Furthermore, although it is true the Navy adjusted Dunn's proposed corrected price downward to reflect the \$798.07 discount, Dunn's price remained low under any scenario. As noted above, where, as here, there is clear and convincing evidence that the intended bid falls within a narrow range of uncertainty and would remain low under any interpretation, correction is proper. See Standard Register Co., B-260426, June 16, 1995, 95-2 CPD ¶ 120. Since the evidence of the mistake is clearly

reflected in the worksheets, and the intended bid is ascertainable, we find that the Navy properly allowed Dunn to correct the bid.

Maple also objects to the correction on the ground that the agency's actions improperly converted this procurement from sealed bidding to a negotiated procurement. Permitting a bidder to correct a properly substantiated mistake, however, is authorized by FAR § 14.406, and does not constitute a change in the procurement's nature.

Maple also challenges the responsiveness of Dunn's bid, complaining that Dunn's bid was signed by two different individuals, and that the bid was ambiguous with respect to whether Dunn had performed any services for a lobbying entity. We dismiss these protest allegations, which were first raised in the protester's comments on the agency's report, as untimely under our Bid Protest Regulations, since they were filed more than 14 calendar days after Maple should have known the basis for them. Section 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995)(to be codified at 4 C.F.R. § 21.2(a)(2)). Where, as here, bids are opened publicly, protesters are required to make a diligent effort to review the bids shortly after bid opening and may not wait to review the awardee's bid in the agency's report. Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210.

The protest is denied.

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